STATE OF FLORIDA

BILL McCOLLUM
ATTORNEY GENERAL

July 2, 2010

VIA U.S. MAIL AND FACSIMILE TRANSMISSON

Kenneth R. Feinberg, Esq.
Feinberg Rozen, LLP
The Willard Office Building
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Washington, D.C. 20004-1008

Re: Claims Process

Dear Mr. Feinberg:

I am writing to you to express my concerns over your testimony this Wednesday before the House Small Business Committee. As Florida's chief legal officer, I must respectfully disagree with both your interpretation of Florida law as well as the relevance of Florida common law in the context of claims made pursuant to a federal claims process. BP has routinely paid claims to Floridians in areas where oil has not yet washed ashore, an approach entirely consistent with the Oil Pollution Act of 1990, 33 U.S.C. §§ 2701 *et seq.* ("OPA"). Since we understand that your involvement is meant to replace (and improve upon) BP's claims process under OPA, it would indeed be a perverse result if the escrow account you administer provides less relief to Floridians than the existing process.

In your testimony, you indicated that the $20 billion escrow account for claims against BP arising out of the Deepwater Horizon catastrophe will be administered according to state law principles. In particular, you stated that if a claim is "legally sufficient under your own state law I will recognize it." You then made several statements concerning your view of the scope of Florida law, apparently from a tort perspective.

For example, in response to questions concerning lost tourism due to the misperception of oil on a local beach, you indicated that "clearly under Florida law I think it's fair to say that it's not compensable. If there is no physical damage to the beaches and it's public perception ... it is

not compensable." You later stated that "Florida law would never recognize that claim." You also referred to the geographical area used to determine eligibility of claims for respiratory and other illnesses made against the September 11th Victim Compensation Fund, perhaps implying that you might set geographical limits in this context as well. Finally, you mentioned that Florida had received a grant from BP for tourism advertising, perhaps to suggest that misperception should not be a problem going forward. While I recognize that you have promised to further address compensability issues in the next few weeks and to keep an open mind about providing compensation to individuals and businesses located in places where oil is not yet visible, I felt compelled to write you now and share my thoughts about both OPA and Florida law.

To begin with, I disagree with your apparent view that state law, much less state tort law, principles are helpful in determining the compensability of claims under the OPA claims process. If that were true, citizens of one Gulf Coast state might receive greater compensation from the $20 billion escrow account than similarly situated citizens of a neighboring state based only on perceived differences in state tort law, despite the existence of a uniform federal statute on oil pollution claims. Indeed, courts do not look to state law to determine the compensability of claims under OPA. See, e.g., Gabarick v. Laurin Maritime (Am.) Inc., 623 F.Supp.2d 741, 747 (E.D. La. 2009) ("OPA explicitly states the damages to which it applies and the remedy to be pursued.")

In your testimony, you cited your experience in administering the September 11th Victim Compensation Fund as the basis for looking to state tort law in considering claims against BP arising out of the Deepwater Horizon blowout. With all due respect, the situations are very different. In particular, I understand that Congress directed you to look at state laws in determining the level of compensation for the victims of the September 11th tragedy. In contrast, the $20 billion escrow account was the result of an agreement and Congress has already spoken as to which oil spill damage claims are compensable when it passed OPA. OPA dictates a uniform claims process for determining compensability under federal law, a determination made without analysis of state law. Moreover, as you recently indicated in a Wall Street Journal interview, the September 11th fund is not "a precedent for any other compensation fund. I think it stands alone in its uniqueness."

In any event, there is no requirement under Florida law that claimants must reside in an area where oil has already washed ashore in order to seek compensation. BP is liable to Florida and its residents for cleanup costs and other damages under the Florida "Pollutant Discharge

Prevention and Control Act," §§ 376.011-376.17, 376.19-376.21, Florida Statutes, as well as under common law theories.

The Florida Supreme Court recently held that the Florida Pollutant Discharge Prevention and Control Act, in addition to Florida common law, permits commercial fishermen to recover lost profits due merely to the **"damaged reputation"** of their fishery products resulting from an oil spill into Tampa Bay, despite not owning any property damaged by the pollution. Curd v. Mosaic Fertilizer, LLC, No. SC08-1920, 2010 WL 2400384, *1 (Fla. June 17, 2010). The Court found the statute to be "clear and unambiguous." Id. at *4. Indeed, "the [Florida] Legislature has enacted a far-reaching statutory scheme aimed at remedying, preventing, and removing the discharge of pollutants from Florida's waters and lands." Id.

Mr. Feinberg, I would welcome the opportunity to meet with you and further discuss this important matter. My office is also available to answer any questions you may have concerning Florida law or our experiences with the claims process to date. Thank you.

Sincerely,

Bill McCollum

cc: Governor Charlie Crist